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No. 280

In the Supreme Court of the United States

October Term, 1936.

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF OF PETITIONER.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1936.

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF *of* PETITIONER.

I.

The Opinion of the Court Below.

The opinion of the court below (the highest court of the state) is not officially reported, but appears as *Taber, County Treasurer,* v. *Indian Territory Illuminating Oil Co.,* in 57 Pac. Rep. (2nd Series) 1167. The opinion is dated March 12, 1935, and is copied in full in the record. (R. 97)

II.

Jurisdiction.

1. The statutory provision believed to sustain the jurisdiction is section 237 (b) of the Judicial Code, as amend-

ed by the Act of February 13, 1925, 43 Stat. L. 937 (Sec. 344, U. S. C. A.) (Appendix I), which reads in part as follows:

> "It shall be competent for the Supreme Court, by *certiorari*, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where there is drawn in question the validity of a treaty or statute of the United States; or where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied * * *."

2. The date of the judgment to be reviewed is March 12, 1935 (R. 90), pursuant to the opinion of the court filed the same day. (R. 90) A petition for a rehearing was filed March 26, 1935 (R. 104), which was denied April 30, 1935. (R. 105) Application for leave to file second petition for rehearing was filed May 6, 1935 (R. 105), which was granted May 6, 1935. (R. 106) Second petition for rehearing was filed May 6, 1935 (R. 106), which was denied May 12, 1936. (R. 122) On May 19, 1936, on application of petitioner, the Supreme Court of the State of Oklahoma issued its order staying mandate in this cause for a period of ninety days to enable petitioner to perfect an appeal to the Supreme Court of the United States. (R. 123) The

transcript of the record of the Supreme Court of the State of Oklahoma, including all the appeal papers, was lodged in the office of the clerk of this court within the time allowed by law and the writ of *certiorari* was granted by this court October 12, 1936.

3. The nature of the case and the ruling below are as follows:

The question concerns the right of the State of Oklahoma, and its municipal subdivisions, to levy an ad valorem tax on personal property consisting of derricks, engines and other oil field drilling equipment owned and used by respondent for exploring for and producing oil and gas from allotted lands belonging to restricted Pawnee Indians in Payne County, Oklahoma, upon which respondent holds a departmental oil and gas mining lease (R. 30) pursuant to the provisions of the Act of Congress approved March 3, 1909 (35 Stat. L. 783) (Appendix II), and the regulations approved by the Secretary of the Interior, September 3, 1912.

The respondent is a private corporation organized for profit and engaged in the production of oil and gas. On January 1, 1933, being the time when the taxable status of property for ad valorem purposes was fixed and determined for said year as provided by section 12581, Oklahoma Statutes 1931 (Appendix III), it was the owner of an oil and gas mining lease, duly approved by the Department of the Interior (R. 30), upon certain allotted lands of restricted Pawnee Indians in Payne County, Oklahoma. That at such time respondent was engaged in producing oil and gas from the leased premises, and owned certain personal property used in its operations consisting of derricks, en-

gines and other oil field equipment, commonly used in such business.

Within the time provided by law, section 12605, Oklahoma Statutes 1931 (Appendix IV), the respondent delivered to the Assessor of Payne County, Oklahoma, a statement in writing disclosing the nature and value of the personal property owned by it in said county for ad valorem tax assessment purposes for the year 1933. (R. 8) This statement contained, in addition to other property of respondent, a schedule of the personal property consisting of the said derricks, engines and other oil field equipment, located upon the restricted Pawnee Indian allotment in question, with the claim that the same was exempt from taxation by the State of Oklahoma on the ground that respondent, by its operations on said allotment, was acting as a federal instrumentality and was actually using the equipment for that purpose.

The county assessor and other taxing authorities of Payne County, Oklahoma, took the position that the respondent was a private corporation organized for profit; that it was not primarily a federal agent or instrumentality; that the taxation of its personal property used upon the leasehold in question amounted to the taxation of the private property of said agent or instrumentality as distinguished from a direct tax upon the instrumentality or agency itself, and that therefore said personal property was subject to taxation under the general taxing statutes of the State of Oklahoma, chapter 66, article 3, Oklahoma Statutes 1931, and particularly section 12317, Oklahoma Statutes 1931 (Appendix V), and placed the property upon the tax rolls of said county. Respondent, thereupon, and

as provided by section 12665, Oklahoma Statutes 1931 (Appendix VI), paid taxes upon the disputed property in the sum of $676.72, under protest (R. 14), and on March 2, 1934 instituted suit in the District Court of Payne County, Oklahoma, to recover the same. (R. 3)

In its petition filed in the said District Court of Payne County, Oklahoma (R. 3), as well as at all stages of this case, respondent urged its property involved was exempt from taxation on the ground that due to its operations it was acting as a federal agency or instrumentality.

The said District Court upon regular hearing April 26, 1934, sustained the claim of the respondent, with the exception of one item of the personal property in question, and directed the petitioner to refund to respondent the sum of $672.62 of the taxes so paid. (R. 90)

From such judgment the petitioner herein, as further provided by the laws of the state, appealed to the Supreme Court of the State of Oklahoma.

The Supreme Court of the State of Oklahoma, upon hearing rendered its final decision on May 12, 1936, denying the contention of petitioner and rendering judgment that said personal property was not subject to taxation for said year. In the second paragraph of the syllabus of the opinion of the Supreme Court of the State of Oklahoma in said case (R. 97) it was stated:

> "The lessee of restricted Indian land under a lease for oil and gas development purposes is an agent or instrumentality employed by the Federal Government for the development and use of such land to explore and produce oil therefrom for the benefit of its Indian wards."
>
> —271 U. S. 609, 70 L. ed. 1112.

The third paragraph of the syllabus:

> "Personal property actually used by the lessee in the production of oil and gas, or either, from restricted Indian land, is a part of a federal agency or instrumentality."

The fourth paragraph of the syllabus:

> "Without congressional consent no federal agency or instrumentality can be taxed by state authority."
>
> —70 L. ed. 1112.

The Supreme Court of the State of Oklahoma is the highest court of said state in which a decision of the suit can be had, and its decision and judgment aforesaid is final.

4. It is respectfully submitted that although the validity of the state statutes under which the tax was imposed was not drawn in question in their entirety, the jurisdiction to review by *certiorari* is conferred by that portion of section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. L. 937 (section 344, U. S. C. A.), which reads as follows:

> "Or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied."

The Supreme Court of the State of Oklahoma has decided a federal question of substance in a way not in accord with applicable decisions of this honorable court (see Rule 35, paragraph 5, subdivision A, 28 U. S. C. A., page 424).

In the following cases involving claims of immunity from state taxation on federal grounds it was held that review may be had by *certiorari:*

Citizens National Bank of Cincinnati v. *Durr,* 257 U. S. 220;

Indian Territory Illuminating Oil Co. v. *Board of Equalization of Tulsa County, Oklahoma; (Indian Territory Illuminating Oil Co.* v. *Board of County Commissioners of Payne County, Oklahoma,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812).

III.

Statement of the Case.

The case having been rather fully stated in paragraph 3 under the heading "Jurisdiction," we shall not burden the brief by an extensive repetition.

The claim that the oil field equipment in question was exempt from taxation was made at the time the respondent filed its listing for ad valorem tax purposes with the county assessor. (R. 8)

The case was tried in the state District Court wherein the same claim of exemption was made and allowed, the court finding the property exempt and the tax thereon amounting to the taxation of a governmental instrumentality. (R. 90)

The petitioner appealed to the Supreme Court of the State of Oklahoma, where the judgment of the District Court was affirmed. (R. 97)

VI.

Specification of Errors.

1. That the Supreme Court of the State of Oklahoma has decided a federal question of substance not in accord with applicable decisions of said court and the applicable decisions of this honorable court.

2. The Supreme Court of the State of Oklahoma erred in affirming the judgment of the District Court of Payne County, Oklahoma, and in holding and deciding that the property in question was not subject to ad valorem taxation for the year 1933 by the State of Oklahoma or any political subdivision thereof.

3. The Supreme Court of the State of Oklahoma erred in refusing to reverse the judgment of the District Court of Payne County, Oklahoma.

4. The Supreme Court of the State of Oklahoma erred in holding, deciding and determining that section 12317, Oklahoma Statutes 1931 (Appendix IV), and section 12605, Oklahoma Statutes 1931 (Appendix III), which provided for the assessment, levy and collection by the State of Oklahoma and political subdivisions thereof of an ad valorem tax on all property situated in the State of Oklahoma during any given tax year, are not valid when applied to oil field equipment used for the drilling for and production of oil and gas from the allotted lands of a restricted Pawnee Indian in Payne County, Oklahoma, by a lessee under an oil and gas mining lease executed by such restricted Indian, duly approved by the Secretary of the Interior, and in holding such taxation is repugnant to the Constitution, treaties and laws of the United States.

5. The Supreme Court of the State of Oklahoma erred in failing to sustain the above mentioned statutes of the State of Oklahoma authorizing the assessment, levy and collection of ad valorem tax on the property involved in this case.

6. The Supreme Court of the State of Oklahoma erred in its decision that the said property was exempt from ad valorem taxation.

7. The Supreme Court of the State of Oklahoma erred in holding and deciding that a lessee of restricted Indian land under lease for oil and gas development is an instrumentality of the federal government, and that personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of the federal agency or instrumentality.

8. The Supreme Court of the State of Oklahoma erred in that said court failed to distinguish between a uniform non-discriminatory tax upon the personal property of a federal agent used in the operation of said agency or instrumentality and a direct tax upon the instrumentality itself.

ARGUMENT.

POINT ONE.

The tax sought to be applied in this case is not upon a federal instrumentality or agency, but is a uniform non-discriminatory tax upon the personal property of such agent, and is therefore authorized.

—*McCulloch* v. *Maryland,* 4 Wheat. 316, 4 L. ed. 579;

Union Pac. Railroad Co. v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787;

Wagoner v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 1154;

Thomas v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. ed. 740;

Alward v. *Johnson,* 282 U. S. 509, 75 L. ed. 496;

Susquehanna Power Co. v. *State Tax Commission of Maryland,* 283 U. S. 291, 75 L. ed. 1042;

Indian Territory Illuminating Oil Co. v. *Board of Equalization,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812.

COMMENT:

There is a decided distinction between a tax directly upon a federal instrumentality and an ad valorem tax merely upon the property of the federal agent. The former may not be imposed, while the latter may be, and the distinction between the two is clearly drawn and repeatedly referred to in the decisions of this court. For instance, the oil and gas mining lease, or franchise, of respondent, is certainly not subject to taxation, *Indian Territory Illuminating Oil Company* v. *Oklahoma,* 240 U. S. 522, 60 L. ed. 799, nor those benefits directly flowing therefrom, *Jaybird Mining Co.* v.

Weir, 271 U. S. 609; *Gillespie* v. *Oklahoma,* 257 U. S. 501; but the individual property of an agent, so engaged, as is involved in this case, has been repeatedly held to be subject to taxation.

In the case of *Union Pacific Railroad Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787, it was said:

> "It is, therefore, manifest that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform."

To the same effect is the language of the court in the case of *Susquehanna Power Co.* v. *State Tax Commission of Maryland,* 283 U. S. 291, 51 S. Ct. 434, 75 L. ed. 1042, a case decided within recent years:

> "The distinction has long been taken between a privilege or franchise granted by the government to a private corporation in order to effect some governmental purpose, and the property employed by the grantee in the exercise of the privilege, but for private business advantage. The distinction was pointed out by Chief Justice MARSHALL in *McCulloch* v. *Maryland,* 4 Wheat. 316, 436, 4 L. ed. 579 (608), and in *Osborn* v. *Bank of United States,* 9 Wheat. 738, 867, 6 L. ed. 204 (234); see *Union P. R. Co.* v. *Peniston,* 18 Wall. 5, 34-37, 21 L. ed. 787 (792-794). It has been followed without departure, and property so owned and used has uniformly been held to be subject to state taxation."

In one of the latest cases dealing directly with restricted Indians and federal agencies, wherein the agent sought to have exempted from state ad valorem taxation its share of oil from the leasehold, previously segregated from the Indian's share, *Indian Territory Illuminating Oil Co.* v. *Board of Equalization*, 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812, it was said:

> "There is a recognized distinction between a non-discriminatory tax upon the property of an agent of government, albeit the property used in, or in relation to, the business of the agency, * * * and a tax which is deemed to impose a direct burden upon the exertion of governmental powers."

We respectfully suggest this court has by its many decisions on this question definitely held that the class of property involved in this case is subject to taxation.

POINT TWO.

The tax sought to be imposed upon the agent's property in this case would not hinder or retard its operations, but would affect them only remotely.

—*Alward* v. *Johnson*, 282 U. S. 509, 75 L. ed. 496;

Thomas v. *Gay*, 169 U. S. 264, 18 S. Ct. 730, 42 L. ed. 740;

Wagoner v. *Evans*, 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 1154.

COMMENT:

It has been held that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax;

that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power, *Union Pac. R. R. Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787; *Western Union Telegraph Co.* v. *Attorney General of the Commonwealth of Massachusetts,* 125 U. S. 530, 8 S. Ct. 961, 31 L. ed. 1154.

The tax sought to be imposed in this case would in no way impede or hamper respondent. It is uniform and nondiscriminatory and in no way greater than that paid by others engaged in similar operations. The amount of the tax is negligible. To require respondent to pay taxes in this case would be no more of an impediment to its operations than were the taxes imposed upon the private property of the agents in the cases heretofore mentioned. Most surely there is nothing in the record indicating the taxes would hinder respondent's operations.

In the case of *Thomas* v. *Gay,* 169 U. S. 264, 42 L. ed. 740, this court upheld a state tax upon the cattle of the lessee of Indian grazing leases. It was said in that case:

> "The taxes in question here were not imposed on the business of grazing, or on the rents received by the Indians, but on the cattle as property of the lessee and as we have heretofore said that such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so it is too remote and indirect to be regarded as an interference with the legislative assembly of Congress."

In the case of *Wagoner* v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 740, the same question was involved as was considered in *Thomas* v. *Gay, supra,* and the court said:

> "It is, indeed, contended that to permit the territory to tax the cattle would tend to discourage the making of such leases, and thus deprive the Indians of the advantages coming to them. This seems to us too indirect and far-fetched an incident to affect our conclusions."

In the case of *Alward* v. *Johnson,* 282 U. S. 509, 75 L. ed. 496, a claim of exemption from taxation was made by the owner of an automotive transportation business who carried the United States mail by reason of a contract entered into with the post office department. In considering the claim of exemption, the court stated:

> "Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely."

We respectfully submit to the court that the cases of *Thomas* v. *Gay* and *Wagoner* v. *Evans, supra,* are analogous to the case at bar and are similar in fact to the present case, with the exception that in this case the lessee is engaged in producing oil from the leasehold, and in those cases the lessee was using the leases for cattle grazing purposes. In the three cases the ultimate benefit to the Indians depended upon the operations of the lessees, and the taxation of the property of respondent used in the development of the lease in the present case would not be dissimilar to the taxation of the lessee's cattle in the former cases.

It has been suggested in this case that certain provisions of the lease give the Indians specific rights which might be affected by the imposition of a tax. The provision

stressed was a part of section 6 of the lease (R. 35) which gives the lessor a lien upon all the improvements, equipment, etc., for unpaid royalty. Such a provision may be of some importance, but its importance and possible benefit is greatly minimized by the fact the lease also provides that lessee, before the lease shall be in force and effect, shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the performance of the lease. (Section 10 of lease.) (R. 36) This should fully protect the lessor from the lessee's failure to pay the royalty owed, as well as a breach of any other of the terms of the lease. At least the chance for the Indian to lose his royalty because of the possible loss of his security, becomes more remote.

It has also been said in this case that the rights conferred upon the Indian by that portion of the lease preventing removal of improvements by respondent, and in effect making them the property of the lessor (section 5 of lease) (R. 34) might be affected by the taxation of the personal property involved. This possibility is, indeed, remote. In the first place, the section referred to permits the respondents to remove the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, which cover all of the property involved in this case with one or two minor exceptions. (R. 8) Further, as a matter of law, it has been held that such a possibility as was advanced is not a sufficient reason to deny the application of taxes. This court, in the case of *Choctaw, Oklahoma and Gulf Railroad Company* v. *Mackey,* 256 U. S. 331, 41 S. Ct. 592, 65 L. ed. 1076, sustained a special improvement tax

against the property of the railroad company, an admitted federal instrumentality, although under its grant there was a possible reverter to the Creek Nation. In *Baltimore Ship Building and Dry Dock Co.* v. *Baltimore,* 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242, it was held that the real and personal property of the dry dock company was subject to taxation by the state, although the property in question had been conveyed to the company by the government under a grant which provided that the government should have free use of the dock forever, and further provided that if it should ever be conveyed or become unfit for such purpose it should revert to and become the absolute property of the United States.

POINT THREE.

The tax prohibited has been defined to be upon the license, franchise, lease or contract of the federal agent, or some benefit directly flowing therefrom, and such immunity has never been extended to include the tangible property of the agent employed in the exercise of the privilege.

—*Thomas* v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. ed. 740;

Alward v. *Johnson,* 282 U. S. 509, 75 L. ed. 496;

Susquehanna Power Co. v. *State Tax Commission of Maryland,* 283 U. S. 291, 75 L. ed. 1042;

Federal Compress & Warehouse Co. v. *McLean,* 291 U. S. 17, 54 S. Ct. 267.

COMMENT:

In each of the above cases the court, in sustaining a tax upon the private property of a federal agency, stressed the fact that the license, franchise, lease or contract, as was involved in the individual case, was not sought to be taxed.

Point Four.

The cases relied upon by respondent to establish its claim to exemption are not in point and are not controlling in this case.

COMMENT:

The respondent has relied for its exemption in this case principally upon three cases, decisions of this court. They are, *Indian Territory Illuminating Oil Co.* v. *State of Oklahoma,* 240 U. S. 522, 60 L. ed 779, wherein an oil and gas mining lease, such as is involved here, was held exempt from taxation; *Gillespie* v. *State of Oklahoma,* 257 U. S. 501, 42 S. Ct. 171, 66 L. ed. 338, wherein the net income from an oil and gas mining lease upon restricted Indian land, was held exempt, and the case of *Jaybird Mining Co.* v. *Weir,* 271 U. S. 609, 46 S. Ct. 592, 70 L. ed. 1112, in which ore stored in bins on lands of restricted Indians held by the mining company by virtue of a mining lease, was held exempt from taxation. In the latter case the Indian's share of the ore had not been segregated, and the tax sought to be imposed was in addition to a gross production tax paid to the state auditor.

It is not difficult to distinguish these cases and the case at bar. They are different in principle and fact. This case does not involve an attempt to tax the lease of respondent, or the income therefrom. Neither is it an attempt to tax oil produced from the lease prior to its removal therefrom and prior to the segregation or payment of the Indian's share. We respectfully suggest that while the ore involved in the case of *Jaybird Mining Co.* v. *Weir* could be considered gross or unconverted income, thus bringing the

case within the rule announced in the case of *Gillespie* v. *State,* it is not unlikely the court gave serious consideration to the fact that the Indian's share of ore had not been segregated nor paid and that a gross production tax previously had been paid thereon. We do not believe the case is authority for the exemption of an agent's individual personal property used in its activities as such agent. In the case of *Indian Territory Illuminating Oil Co.* v. *Board of Equalization,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812, the oil involved therein was produced under the same authority and under like circumstances as was the ore in the *Jaybird Mining Company* case, but in the former, the agent had by its acts, definitely reduced the oil to the status of becoming its individual personal property, and hence was held to be subject to the taxation.

We respectfully submit to the court that the cases relied on by respondent are authority for the rules therein stated, but not one of them deals with, or in any manner considers, separate private property of the lessee used in connection with or upon the lease, and not one of the cases contains any reasoning or states any rule relative to the taxable status of any such private property; that although giving the cases relied on by respondent the broadest possible interpretation in its favor, one must nevertheless conclude these cases do not support respondent's claim because the tax sought to be imposed is not upon the lease, agency or instrumentality, or upon any benefit directly associated therewith, but upon its individual personal property, and as such is authorized by the consistent holdings of this court.

Conclusion.

We, therefore, respectfully submit that petitioner's petition for writ of *certiorari* was properly granted and that the decision of the Supreme Court of the State of Oklahoma should be reversed.

Respectfully submitted,

GUY L. HORTON,
L. O. LYTLE,
Counsel for Petitioner.

LEON J. YORK,
County Attorney of Payne County,
State of Oklahoma;
GEO. JENNINGS,
Of Counsel for Petitioner.

APPENDIX.

Relevant Statutes.

I.

Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. L. 937 (section 344, U. S. C. A.):

> "It shall be competent for the Supreme Court, by *certiorari*, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where there is drawn in question the validity of a treaty or statute of the United States; or where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to grant a review on *certiorari* under this paragraph."

II.

Act of March 3, 1909 (35 Stat. L. 783):

> "*Leases of Allotted Lands for Mining Purposes.*

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect."

III.

Section 12581, Oklahoma Statutes 1931:

"All taxable property shall be listed and assessed each year at its fair cash value, estimated at the price it would bring at a fair voluntary sale, in the name of the owner thereof on the first day of January of each year, as soon as practicable on or after the fifteenth day of January, including all property owned on the first day of January of that year, and in case of stocks of goods, wares and merchandise the statement shall include the average amount of the same for the preceding year ending January first, *provided,* that when the owner of any personal property resides in a township and the property is located in any city or town, then the property shall be assessed in the township where the owner resides, and *provided further,* that real property shall be listed and assessed only once in every two years beginning in the year 1915 continuing every two years thereafter. If any real estate shall become taxable during the time between the period for assessing real estate, the county assessor shall assess same for taxation and place the same upon the tax rolls, or when any improvements of buildings of value are placed upon real estate after the date of the biennial assessment the value of such real estate as increased by said improvements, shall be added by the county assessor to the assessed valuation for the

next ensuing year; and in case the improvements on real estate are destroyed by fire or other cause, or in case the value of land being impaired, damaged or destroyed on account of floods or overflow of streams in the State of Oklahoma, then the County Board of Equalization, or in case the damage occurs subsequent to the adjournment of said board, then the Board of County Commissioners in which said damage or destruction has occurred, shall estimate the amount of depreciation in value for said year and shall make an order directing the assessment of said property at the fair cash value thereof, taking into account the damage occasioned by fire, floods or other causes."

IV.

Section 12605, Oklahoma Statutes 1931:

"Every person, firm, company, or association, their lessees, trustees or receivers, owning, operating or controlling any oil or gas well or any property of any kind used by or for the purpose of producing, pumping, distributing or storing crude oil or natural gas as herein defined, except public service corporations, shall on the first day of March of each year, or within thirty days thereafter, make out and deliver to the township assessor of the municipal township in which said well is situated, a statement in writing verified by the oath of the officer, agent or employee of any such person, firm, company, corporation or association, their lessees, trustees, or receivers having knowledge of the facts set forth in separate entries, the following, to-wit:

First. The name or number of each well, and a description of the land upon which the same is situated, including number of land.

Second. The name or names of the owner or owners thereof.

Third. A statement of all piping, casing, tubing, and give the number of feet of each, including the pip-

ing of owner of the lease together with a separate account of any such property belonging to any other person, firm, company, corporation or association, trustees, or receivers located on such lands. Said statement shall include all pipe buried and on the grounds and pipe along the section lines of said lease.

Fourth. A statement of the number and sizes of all boilers and boiler houses, the number of gas and steam engines, and pumps, including water, oil and gas pumps, giving their sizes and conditions.

Fifth. The number of feet of sucker rods and all other rods used on lease. The number of derricks, the material in and about tool-houses, the number of teams and wagons. The number and size of all wooden and steel tanks, and the number thereof and name of owner thereof, and the amount of oil in all wooden, steel or earthen tanks.

Sixth. The amount of lumber used in casing tanks and for other purposes, and any and all buildings used in connection with the production of any such oil or gas. Said statement shall include any other improvements and machinery, such as drilling rigs, sand lines, cables, and all appurtenances used in connection with oil or gas wells, said statement shall include the value of each article named, at what it would bring at a fair voluntary sale."

V.

Section 12317, Oklahoma Statutes 1931:

"All property in this state, whether real or personal, including the property of corporations, banks and bankers, except such as is exempt, shall be subject to taxation; *provided,* that no farm products while remaining in the raw state, such as cotton, corn, wheat, oats and the like, shall be subject to ad valorem tax, but be subject to the income tax laws of the state."

VI.

Section 12665, Oklahoma Statutes 1931:

"In all cases where the illegality of the tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him, for a period of thirty days and if within such time summons shall be served upon such officer in a suit for recovery of such taxes, the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the court having jurisdiction thereof, and they shall have precedence therein; if, upon final determination of any such suit, the court shall determine that the taxes were illegally collected, as not being due the state, county or subdivision of the county, the court shall render judgment showing the correct and legal amount of taxes due by such person, and shall issue such order in accordance with the court's findings, and if such order shows that the taxes so paid are in excess of the legal and correct amount due, the collecting officer shall pay to such person the excess and shall take his receipt therefor."